

**REMARKS:**

**Status Of Claims**

Claims 1-4, 6-10, 12-21, 23-33, 35-41, and 43-46 were previously pending and are currently pending in the application with claims 1, 8, 14, 21, 29, 37, and 44 being independent.

**Office Action**

In the office action, the Examiner rejected claims 1-4, 6-10, 12-15, 20, 21, 23-41, and 44-46 under 35 U.S.C. § 103(a) as being unpatentable over Fruchterman et al., U.S. Patent No. 5,470,233, in view of Tognazzini, U.S. Patent No. 5,872,526. The Examiner also rejected claims 16-19 under 35 U.S.C. 103(a) as being unpatentable over Fruchterman and Tognazzini in view of Kronfeld, U.S. Patent No. 6,577,947. The Examiner also rejected claims 42 and 43 under 35 U.S.C. 103(a) as being unpatentable over Fruchterman. Applicant respectfully submits that the currently pending claims distinguish the present invention over Fruchterman, Tognazzini, Kronfeld, and the other prior art references taken alone or in combination.

Specifically, claims 1, 8, and 14 each recite "analyzing cartographic data for a predetermined area around the present location for user identified criteria to avoid, wherein a shape of the predetermined area is based on a heading". Similarly, claim 29 now recites "analyzing cartographic data for a predetermined area around the present location for user identified criteria to avoid, wherein a size of the predetermined area is based on a speed".

Finally, claim 44 now recites “analyzes cartographic data for a predetermined area around the present location value for user identified criteria to avoid, wherein a size and shape of the predetermined area is based on a speed and heading”.

In contrast, neither Fruchterman nor Tognazzini discloses a size or shape of the predetermined area being based on a speed or heading. The Examiner admits that “Fruchterman does not teach a predetermined area around a user with a predetermined shape based on heading”. Page 2 of the Final Office Action. Thus, the Examiner cites Tognazzini and mistakenly asserts that Tognazzini “calculates a predetermined area based on heading (column 7-8)”. Page 3 of the Final Office Action. However, columns 7 and 8 of Tognazzini merely teach “a threat sphere” or a “threat cylinder ... the axis of which extends in the Z (elevational) direction”. Column 8, lines 9-18. A sphere or vertical cylinder, by their very nature, must be completely independent of heading. Thus, Tognazzini teaches a threat envelope completely independent of heading and/or speed. As a result, no combination of Fruchterman and/or Tognazzini discloses, suggests, or makes obvious the limitations of claims 1, 8, 14, 29, or 44.

Claim 21 recites “determining a heading, wherein determining the heading includes determining the heading from an electronic compass signal”. The Examiner mistakenly asserted that “GPS heading data is a functional equivalent of an electronic compass signal, in that it provides a heading signal from prior logged positions”. Page 2 of the Final Office Action. However, as previously argued, providing “a heading signal from prior logged positions” is exactly the limitation of GPS heading data that the present invention's

electronic compass overcomes. Thus, typical GPS data is simply not the equivalent of an electronic compass signal. As a result, no combination of Fruchterman and/or Tognazzini discloses, suggests, or makes obvious "determining a heading, wherein determining the heading includes determining the heading from an electronic compass signal", as claimed in claim 21.

Claim 37 recites "a transceiver operably coupled to the processor to wirelessly transmit and receive voice data signals with an electronic device". In contrast, Fruchterman discloses absolutely no capability to "transmit and receive voice data signals". The Examiner points to Fruchterman's voice synthesis. In fact, the Examiner acknowledges that "the invention taught by Fruchterman discloses a speech synthesizer, rather than a wireless transmission of voice data as claimed". Pages 7-8 of the Final Office Action. However, the Examiner appears to ignore the elements of a prima facie case of obviousness as the Examiner fails to cite a reference that does teach "a wireless transmission of voice data as claimed". As a result, no combination of Fruchterman and/or Kronfeld discloses, suggests, or makes obvious "a transceiver operably coupled to the processor to wirelessly transmit and receive voice data signals with an electronic device", as claimed in claim 37.

Obviousness, it will be appreciated, can be a problematic basis for rejection because the Examiner, in deciding that a feature is obvious, has benefit of the Applicant's disclosure as a blueprint and guide, whereas one with ordinary skill in the art would have no such guide, in which light even an exceedingly complex solution may seem easy or

obvious. Furthermore, once an obviousness rejection has been made, the Applicant is in the exceedingly difficult position of having to prove a negative proposition (i.e., non-obviousness) in order to overcome the rejection. For these reasons, MPEP § 2142 places upon the Examiner the initial burden of establishing a *prima facie* case of obviousness. If the Examiner fails to establish the requisite *prima facie* case, the rejection is improper and will be overturned. *In re Rijckaert*, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). Only if the Examiner's burden is met does the burden shift to the applicant to provide evidence to refute the rejection.

Specifically, the Examiner must satisfy three criteria in order to establish the requisite *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine their teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all the claim limitations. MPEP §706.02(j), citing *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

In meeting this initial burden, as stated in MPEP §2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Furthermore, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992); *see also In re Gordon*, 221 USPQ2d 1125, 1127 (Fed. Cir. 1984). Additionally, "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP §2143.01.

In the present case, the Examiner has failed to cite art that teaches each and every limitation of the currently pending claims, much less any suggestion or motivation to make the Examiner's proposed modification. For example, as discussed above, neither Fruchterman or Tognazzini discloses, suggests, or makes obvious a size or shape of the predetermined area being based on a speed or heading as claimed in claims 1, 8, 14, 29, or 44. Furthermore, no combination of Fruchterman and/or Tognazzini discloses, suggests, or makes obvious "determining a heading, wherein determining the heading includes determining the heading from an electronic compass signal", as claimed in claim 21. Finally, no combination of Fruchterman and/or Tognazzini discloses, suggests, or makes obvious "a transceiver operably coupled to the processor to wirelessly transmit and receive voice data signals with an electronic device", as claimed in claim 37.

The remaining claims all depend directly or indirectly from independent claims 1, 8, 14, 21, 29, 37, or 44, and are therefore also allowable.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 501-791. In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Respectfully submitted,

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